

NO. 531.

TRANSCRIPT OF RECORD.

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UNITED STATES COURT OF APPEALS  
IN THE INDIAN TERRITORY.

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J. W. ZEVELY, ET AL., Appellants,

VS.

W. G. WEIMER, ET AL., Appellees.

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APPEAL FROM THE UNITED STATES COURT FOR THE CENTRAL  
DISTRICT, SITTING AT SOUTH M'ALESTER, I. T.

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FILED SEPTEMBER 1, 1903.



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1           In the United States Court of Appeals for the  
                    Indian Territory.  
                    J. W. Zevely, et al, Appellants,

vs.

W. G. Weimer, et al, Appellees.

Your petitioners, J. W. Zevely, Acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, Union agency, and John West, Alf. McCay, J. F. Wisdom, and D. H. Kelsey, Complain of W. G. Weimer, and the other complainants, mentioned in the complaint in equity of the record hereto attached, and for cause of complaint state:

That heretofore, to-wit, on the 31st day of August, 1903, appellees recovered a judgment against the appellants in the United States Court for the Central District of the Indian Territory, sitting at South McAlester, by the consideration of which judgment, the Court decreed, that the defendants in said bill in equity be perpetually enjoined, together with their agents, servants and employees from closing the business houses and from interfering with the business of the said plaintiffs to said bill within the City of South McAlester, Indian Territory, and further ordering and decreeing that said plaintiffs have and recover of said defendants to said bill in equity all their costs laid out and expended in said action.

Your petitioners feeling themselves aggrieved by said judgment and decree present this their petition for an appeal to the United States Court of Appeal, for the Indian Territory, and present herewith a duly certified transcript of the record of said cause in the United States Court for the Central District, and ask that the same be taken as a part of this petition.



Your petitioners further state that they believe that there is error in the judgment and proceeding of said United States Court for the Central District, which will be more specifically set out in their brief and argument, as required by the rules of this Court.

Wherefore, your petitioners pray an appeal to the United States Court of Appeals for the Indian Territory, and that said Court of Appeals reverse the judgment and decree of the United States Court for the Central District, and render judgment for the appellants herein and do such other things as will restore the appellants to the rights they have lost by said judgment, and for all proper relief.

J. H. WILKINS,

United States District Attorney.

And MANSFIED, McMURRAY and CORNISH,

Attorneys for Appellants.

Appeal allowed this 1st day of September, 1903.

WM. P. FREEMAN,

Clerk of the United States Court of Appeals  
for the Indian Territory.

3 United States of America,  
Indian Territory,  
Central District.

Pleas before the Honorable William H. H. Clayton, Judge of the United States Court for the Central District of the Indian Territory, at South McAlester, in a cause pending in said court wherein W. G. Weimer, et al., are plaintiffs, and J. W. Zevely, et al., are defendants.

Complaint in Equity.

In the United States Court for the Central District of the Indian Territory, at South McAlester.

W. G. Weimer,

S. G. Holmes,

Townsend Wholesale Grocery Co., a corporation,

Arcade Dry Goods Co., a corporation,

Herman Levin,

Stewart & Nuckols, a partnership,

The P. A. Vance Grocery Co., a corporation,

The Chaney-Becker Trading Co., a corporation,

Ben Durfee & Co., a partnership,

Star Grocery Co., a partnership,

Armour Packing Co., a corporation,

Cudahy Packing Co., a corporation,

Swift & Company, a corporation, and

Hammond Packing Company, a corporation,  
Plaintiffs,

vs.

J. W. Zevely, acting United States Indian Inspector,  
J. Blair Shoenfelt, United States Indian Agent,  
Union Agency.

I. S. Lowry and John West and Alf. McKay,  
J. F. Wisdom and D. H. Kelsey,

Defendants.

Complaint in Equity.

The Plaintiffs. W. G. Weimer, S. G. Holmes,  
4 Townsend Wholesale Grocery Co., a corporation,  
Arcade Dry Goods Co., a corporation, Herman Levin,  
Stewart & Nuckols, a partnership, The P. A. Vance Grocery Co., a corporation, The Chaney-Becker Trading Co., a corporation, Ben Durfee & Co., a partnership, Star Grocery Company, a partnership, Armour Packing Co., a corporation, Cudahy Packing Co., a corporation, Swift & Company, a corporation, and Hammond Packing Company, a corporation, who bring this suit on behalf of themselves, and other citizens and residents of the Central District of the Indian Territory, similarly situated, and who are very numerous, for cause of complaint against the defendants, J. W. Zevely, acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, Union agency, I. S. Lowry, Alf. McKay, J. F. Wisdom, D. F. Kelsey and John West, say:

1st. That the plaintiffs are citizens of the United States, residing and carrying on business within the city of South McAlester, Central District of the Indian Territory; that the said city of South McAlester has been duly incorporated as permitted by law, and that the plaintiffs, and each of them, are engaged in mercantile business of different kinds in said city of South McAlester.

That the defendant, J. W. Zevely, is acting United States Indian Inspector for the Indian Territory, and that J. Blair Shoenfelt is United States Indian Agent for the Union agency, which includes the Choctaw Nation; that defendant, I. S. Lowry, is in the employ of the Choctaw Nation, as a tax, revenue and royalty collector; and that the defendant, John West, J. F. Wisdom and D. H. Kelsey are employed by the said defendants, J. W. Zevely and J. Blair Shoenfelt, in their capacities above stated; that said defendant, Alf. McKay is working under the direction and command of the aforesaid defendants. That defend-



ant, Lowry, resides within the Central District  
5 of the Ind. Ter., and the other defendants are to be found therein.

2nd. For their cause of complaint herein, plaintiffs allege that on the — day of April, 1903, the said J. Blair Shoenfelt, as Indian agent, did notify them and each of them that unless they paid the amount of money demanded by the Choctaw Nation, and by the defendant, I. S. Lowry, by the 30th day of April, 1903, that he, the said Indian agent, would forthwith close their places of business, and prevent them from carrying on their business in the said city of South McAlester until they should pay the said sums of money demanded from each and all of them by the said Choctaw Nation, and by the said I. S. Lowry; that it is claimed by the defendant that the said sums of money are due from the plaintiffs to the said Choctaw Nation for the privilege of doing business as aforesaid in the Choctaw Nation; that all of the defendants are acting together in their threats and intentions to take possession of the business houses and property of the plaintiffs in the said city of South McAlester, and to close up the said houses and prevent plaintiffs from carrying on their businesses as aforesaid, and that defendants have made various threats to this effect, and are now threatening so to close the houses of the plaintiffs and restrain them from doing business unless the sums of money aforesaid shall be paid, and that unless the said defendants are restrained by this Honorable Court, they will proceed so to close up the plaintiffs houses, and interfere with the business of the plaintiffs, and prevent them from carrying on their said businesses.

3rd. That the tax or debt sought to be collected by the defendants is one and one-half (1½) per cent on all the goods shipped into the City of South McAlester by these  
6 plaintiffs; that said tax is so great, oppressive and unreasonable, that if these plaintiffs are required to pay the same, it will amount, practically, to confiscation, and will drive plaintiffs out of business, and that plaintiffs will be unable to pay said tax and continue their business.

4th: That the plaintiffs are citizens of the United States, and if the foregoing claim or debt is held to be a tax, it cannot be legally levied against these plaintiffs, because the Choctaw Nation or Tribe of Indians has no power to tax the property of a citizen of the United States not a member of the Choctaw Tribe or Nation of Indians.

5th: Plaintiffs state that they all have stocks of merchandise in said City of South McAlester, ranging in value from \$500.00 to \$75,000.00, and if their places of business shall be closed by the defendants, as threatened by them, they will be irreparably damaged or injured; and plaintiffs allege the fact to be that unless the defendants are restrained by this Honorable Court from carrying out said threats as above set out, they will certainly execute said threats and close up the places of business in said City of South McAlester now occupied and held by the plaintiffs, and thus irreparable loss and damage will be caused to plaintiffs.

6th: Plaintiffs further state that the tax levied by the Choctaw Nation, or debt sought to be collected by it, is unlawful, and that the said defendants have no right or authority to collect or demand the same from these plaintiffs, or in any manner to interfere with their business. that the agents of the Interior Department of the United States have no right or authority to collect or demand  
7 such tax or debt from these plaintiffs:—

First. Because the Choctaw Nation is no part of the government of the United States:

Second. Because the Choctaw Nation has provided its own officers or methods of collecting said tax or debt; and,

Third. Because the Choctaw Nation still exists as a Government, and no authority has been imposed upon the Interior Department, or its agents, by express law, to collect such tax or debt.

7th. Plaintiffs state that they are not indebted to the Choctaw Nation or tribe of Indians in any sum of money whatever by the way of debt, or by the way of taxes, or by the way of license or permit fees.

8th. Plaintiffs further say that on the 23rd day of April, 1897, a convention or agreement, known as the Atoka Agreement, was entered into by and between the United States of America and the Choctaw Tribe of Indians; which said agreement was thereafter ratified by the people of the Choctaw Nation, and thereafter proclaimed by the President of the United States to be the law; that by the provisions of said agreement, land within the incorporated city of South McAlester, within which these plaintiffs reside and do business, were segregated from the public domain of the Choctaw Nation, and set apart as a townsite under and by virtue of what is known as the townsite provision in said agreement, and that said townsite has been platted, sur-



veyed and appraised under the direction of the United States and the Choctaw Nation or Tribe of Indians, and that all of the land within the said townsite has been sold and disposed of according to the terms of said Atoka Agreement; that said agreement provides amongst other things,

8 that the owners of improvements upon lots shall have the right to buy one residence lot and one business lot in the said City of South McAlester, and in other towns in the Choctaw Nation, at 50 per cent of the appraised value of such improvements, and the remainder of improved property at 62½ per cent of the appraised value of the same, within sixty days from the date of notice served upon him that such lot is for sale, and if he purchases same, he shall, within ten days from such purchase, pay into the treasury of the United States one-fourth of the purchase price, and the balance in three equal annual installments, and when the entire sum shall be paid, he shall be entitled to a patent for the same; that a

9th. That a number of the plaintiffs herein are the owners in fee of the lots of ground upon which their business houses are located within the said City of South McAlester, and are the owners of the buildings in which they are doing business; that the lands upon which the said business buildings are located have been listed and appraised to them by the Townsite Commission, and such action has been approved by the Secretary of the Interior, and that all the plaintiffs are in lawful possession of the lots upon which they are doing business as aforesaid in the said city of South McAlester; that those of the plaintiffs owning the lots upon which they are doing business and have not paid the same in full, have paid such amounts as are due thereon and are ready and willing and intend to pay the amounts which shall become due according to the terms of the said Atoka agreement; that they have made all the payments required by law, and are not now in default of anything, and that all of the plaintiffs herein are bona fide residents of the said City of South McAlester, and that none of them are in default as to any payments upon their

9 business property or upon their homes. And plaintiffs say that if the threats of these defendants are carried into effect, they will be revolutionary and subversive of all law, and will produce great and irreparable injury to these plaintiffs, and that these plaintiffs are without any adequate legal remedy. Plaintiffs say they cannot recover from the defendants and that the defendants are

not worth sufficient property out of which the defendants can make and realize the damages, which will accrue to them by reason of so closing and interfering with their business.

10th: That by reason of the foregoing, the Choctaw Nation or Tribe of Indians has no power or authority to levy any tax or collect any debt from any citizen of South McAlester, situated as the plaintiffs are, and that if such right could exist, which plaintiffs deny, the defendants ought not to be permitted to close plaintiffs business houses and resort to such extraordinary and oppressive methods as are indicated by their threats.

Wherefore, the premises considered, plaintiffs pray that your Honor will grant a temporary restraining order herein, enjoining and restraining the defendants, and each of them, their agents, servants and employes, from closing the business of these plaintiffs, and from interfering with these plaintiffs, or the business or place of business belonging to plaintiffs; and plaintiffs pray that upon final hearing herein, that said restraining order be made perpetual, and for such other relief as to your Honor shall seem meet and proper.

STUART & GORDON,

Attorneys for Petitioners.

10 W. G. Weimer, being first duly sworn, states upon oath that he has read the foregoing complaint, and that the statements therein are within his knowledge true and correct.

W. G. WEIMER.

Subscribed and sworn to before me, this 5th day of May, 1903.

(Seal.)

R. S. CATE,  
Notary Public.

My Com. expires May 13, 1906.

Endorsed.

No. 3535.

W. G. Weimer, et al., Plaintiffs,

vs.

J. W. Zevely, Acting U. S. Indian Inspector, et al., Dfts.  
In the United States Court. South McAlester, Ind. Ter.  
Complaint in Equity.

Filed May 5, 1903.

E. J. FANNIN,  
U. S. Clerk, Cen. Dist., I. T.  
STUART & GORDON,  
Attorneys for Petitioners.



11

## Notice.

(Caption omitted.)

To J. W. Zevely, J. Blair Shoenfelt, I. S. Lowry, John West, Alf McKay, J. Fent Wisdom, Frank West and D. H. Kelsey:

Please take notice that on the 5th day of May, 1903, the above named plaintiffs will apply to Hon. W. H. H. Clayton, in Chambers, in the City of South McAlester, at 2 o'clock p. m., for an order restraining you from interfering with the business of the plaintiffs in the City of South McAlester, and from closing their places of business, and from trespassing in any manner upon the plaintiffs' property in said City of South McAlester.

STUART & GORDON,  
Attorneys for Petitioners.

United States of America,

Indian Territory,

Central District—ss.

I hereby certify that I served the within notice by delivering a true copy of the same to each J. Fent Wisdom, I. S. Lowry, John West, Frank West, Alf McKay and D. H. Kelsey, in the City of South McAlester, I. T., this 5th day of May, 1903, at 1:35 o'clock p. m., and that the other named defendants could not be found within this district.

BENJ. F. HACKETT,  
U. S. Marshal.

By G. L. MILLER, Deputy.

12 Answer of I. S. Lowry.

(Caption omitted.)

Comes the defendant, I. S. Lowry, and states that he is the Permit and Revenue Collector for the — District of the Choctaw Nation; that he has committed no act as alleged in said bill, except as he might lawfully do to demand of the plaintiffs the amount due by them to him as such revenue collector, under the laws of the Choctaw Nation; that he has not attempted, nor will he attempt to close their stores or places of business, or take any action except to demand the amount so due as aforesaid.

Wherefore, having fully answered, he asks that said injunction as to him be not issued, and that he had and recover all his costs in this behalf had or expended.

I. S. LOWRY.

By MANSFIELD, McMURRAY and CORNISH,  
Attorneys.

Endorsed.

3535.

W. G. Weimer, et al.

vs.

J. W. Zevely, et al.

Answer of I. S. Lowry.

Filed in Open Court, May 21, 1903, at South McAlester, I. T.

E. J. FANNIN,  
U. S. Clerk.

13 Demurrer.

(Caption omitted.)

Come now the defendants, J. W. Zevely, Acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, Union Agency, John West, Alf McKay, J. F. Wisdom and D. H. Kelsey, and demur to the complaint of the plaintiffs, and for ground therefor state:

First. Because the bill in equity of the plaintiffs filed in this case does not state facts sufficient to entitle them to the relief prayer for, and because the same states no cause of action.

Second. Because the defendants committed the acts complained of in their capacities as officials as stated in said bill, acting under the authority conferred upon them by law as such officials, and the direct orders of their superiors in office, whom they are bound to obey; that the defendants in all of the acts complained of were lawfully acting within the scope of the authority conferred upon them by law, and in the exercise of the discretion vested in them by their superiors in office, as a co-ordinate branch of the government, acting within the legitimate scope of its authority; that said action is in conformity with the long established construction of the laws of the United States relating to Indian affairs and the treaties entered into between the United States and the Choctaw or Chickasaw Nations or tribes of Indians. That in order that the authority under which defendants have acted may fully appear the following letters and communications are hereto attached as exhibits, to-wit:

Marked "A." A letter from the office of the United States Indian Inspector to the United States Indian Agent, dated April 18, 1903, advising him of the ruling of the Honorable Secretary of the Interior that stores should be closed for non-compliance with the tribal laws.

Marked "B." A letter from the United States Indian Inspector to the United States Indian Agent, dated April



20, 1903, instructing him to personally notify certain persons and firms reported by the Principal Chief as having failed to pay the tribal tax.

Marked "C." A letter from the United States Indian Inspector to the United States Indian Agent, dated May 4, 1903, transmitting report of the Principal Chief of the Choctaw Nation, that certain persons and firms named still refused to pay the tax demanded and instructing him to close the places of business of such persons and companies unless such tax was paid.

Marked "D." A copy of an order of the United States Indian Agent, dated May 5, 1903, to the Captain of the Indian Police, directing him to close the places named.

Marked "E." A copy of the notice served by the United States Indian Agent upon all the persons named.

Third. Because the Court has no jurisdiction over the parties and subject matter of this action.

Fourth. Because the premises considered, the court has no jurisdiction or power to control by injunction or otherwise, the discretion vested by law in the defendants as a part of the co-ordinate branch of the government, acting within the scope of its authority.

J. H. WILKINS,

United States District Attorney.

For the Defendants.

MANSFIELD, McMURRAY and CORNISH,  
Attorneys Choctaw and Chickasaw Nations.

"A"

Department of the Interior.

United States Indian Inspector for Indian Territory.

Muskogee, Ind. T., April 18, 1903.

Mr. J. Blair Shoenfelt,

United States Indian Agent.

Sir:

On April 10, 1903, the Honorable Secretary of the Interior considered the matter of the duty of the Department relative to the enforcement of the tribal taxes of the Choctaw and Chickasaw Nations, and concurred in the opinion of the Honorable Acting Commissioner of Indian Affairs, that the purchase of a lot within the limits of any town by any non-citizen does not carry with it the right to conduct business within the limits of the Nation in which such town is situated contrary to the laws of the Nation.

The department holds that the provisions of the Indian

Appropriation Act, approved May 27, 1902, does not forbid the department from taking any action that it was not authorized to take prior to the passage thereof, except only that it cannot remove the persons for nonpayment of the tribal taxes, who in the language of the proviso are "in lawful possession of any lots or parcels of land in any town or city in the Indian Territory which has been designated as a townsite under existing laws and treaties."

I have today advised the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation of the views of the department, as herein expressed, and they have been informed that if persons from whom tribal tax is due refuse to pay the same, full report of the matter should be made to you in the usual manner.

The department closes its report with the following instruction:

"And upon the report of the executive officers of said Nations that parties refuse to pay the tribal tax due from them, action should be promptly taken in order that their stores and places of business may be closed, unless the tribal tax is paid."

Very Respectfully,

J. W. ZEVELY,

Acting U. S. Indian Inspector  
for the Indian Territory.

"B."

Department of the Interior.

United States Indian Inspector for Indian Territory.

Muskogee, Ind. T., April 20, 1903.

Mr. J. Blair Shoenfelt,

17 United States Indian Agent.

Sir:

I respectfully return herewith the letter of the Principal Chief of the Choctaw Nation; dated April 11, 1903, and other enclosures, in the matter of the refusal of the following persons and firms to pay the tribal merchandise tax imposed by the laws of the Choctaw Nation, which papers were sent this office with your letter of even date herewith.

W. G. Weimer, Stewart & Nuckols, R. V. Austin, Fred McIntyre, G. W. Walker & Sons, Diamond Hardware Co., J. M. Zike & Brother, Arcade Dry Goods Co., Choctaw Tailoring Co., The Grand Leader, C. E. Logan, Metropolitan Barber Shop, H. J. Bettes, Ben Durfee & Co., The Hub Clothing Co., G. B. Kitt, Chaney-Becker Trading Co., Head Mercantile Co., J. F. Ferguson, Star Grocery Store,



T. H. Kenneaster, and P. A. Vance Grocery Co.

In view of the decision of the Department of April 10, 1903, concerning which you were advised on the 18th, instant, you are instructed to serve, through an Indian Policeman, each one of the persons named with a personal notice to the effect that he must pay the amount due and comply with the tribal laws on or before April 30, 1903, failing in which their places of business will be closed.

I have today advised the Principal Chief that these notices will be served at once, and that he should report through his district collector on May 1, 1903, the names of the persons who are yet delinquent.

Very respectfully,

J. W. SEVELY.

Acting U. S. Indian Inspector for  
Indian Territory.

18 Executive Office, Choctaw Nation.  
Green McCurtain, Principal Chief.  
Sans Bois, I. T., April 11, 1903.

Honorable J. Blair Shoenfelt,  
U. S. Indian Agent,  
Muskogee, I. T.

Sir:

Enclosed you will find the report of I. S. Lowry, district collector for the 1st district of the Choctaw Nation, in which he states that he has made demand upon the persons named in said report, that they pay the taxes due from them to the Choctaw Nation. These parties are all doing business as licensed traders at South McAlester, I. T.

I most respectfully suggest that immediate steps be taken to close the various places of business of these parties as provided by the laws of the Choctaw Nation and the laws of the United States regulating trade and intercourse with the Indian tribes. I believe that vigorous effort on the part of the Indian office will induce these people to pay their tribal tax at once.

Very Respectfully,

GREEN MCCURTAIN,

Principal Chief, C. N.

South McAlester, Indian Territory, April 91, 1903.  
Honorable Green McCurtain,  
Principal Chief Choctaw Nation,  
Sans Bois, Indian Territory.

19 Sir:

As District Royalty Collector for the first District

of the Choctaw Nation, I have made demand upon the following persons for the merchandise tax imposed by the laws of the Choctaw Nation, upon merchandise introduced therein, and they have failed and refused to make payment as required by our laws.

W. G. Weimer, Druggist.

Stewart & Nuckols, Retail Grocers.

R. V. Austin, Druggist.

Fred McIntyre, Jeweler.

G. W. Walker & Sons, Dry Goods.

Diamond Hardware Company, Hardware.

J. M. Zike & Brother, Harness and Saddlery.

Arcade Dry Goods Co., Dry Goods.

Choctaw Tailoring Co., Merchant Tailors and  
Gent's Furnishers.

The Grand Leader, Dry Goods.

C. E. Logan, Barber.

Metropolitan Barber Shop, Barbers.

H. J. Bettes, Druggist.

Ben Durfee & Co., Dry Goods.

The Hub Clothing Co., Clothing and Gent's  
Furnishing.

B. B. Kitt, Merchant Tailor.

Chaney-Becker Trading Co., Furniture and  
Hardware.

Head Mercantile Co., Gent's Furnishings.

J. F. Ferguson, Retail Grocer.

Star Grocery Store, Retail Grocers.

T. H. Kenneaster, Jeweler.

P. A. Vance Grocery Co., Wholesale Grocers.

20 My request is that you report to the U. S. Indian Agent that the owners and managers of these places of business have failed and refused to make payment of the merchandise tax levied by our laws; and request that their places of business be closed, they being conducted in violation of our law.

I respectfully urge that this report be sent forward at the earliest possible time, as the refusal of these persons to pay and the refusal of others in this town who have heretofore been reported, has had an effect throughout the country, and rendered difficult and impossible, in many instances, to collect the tribal revenues of the Choctaw Nation which it is my duty to collect under the laws,

If these people are dealt with as provided by our laws and the laws of the United States regulating trade and



intercourse with Indian Tribes, the effect will be that the opposition which has developed to the enforcement of our laws will be broken, and our laws can then be enforced throughout the Choctaw Nation.

Very respectfully,

I. S. LOWREY,

District Collector, First District, Choctaw Nation.  
"C."

Department of the Interior,

United States Indian Inspector for Indian Territory,  
Muskogee, Ind. Ter., May 4, 1903.

Mr. J. Blair Shoenfelt,

United States Indian Agent,

Sir:

There is enclosed herewith a communication from the  
21 Principal Chief of the Choctaw Nation, with which he transmits a letter from Mr. I. S. Lowry, tribal collector for the first district, giving a list of the names of persons and companies doing business in the Choctaw Nation who have failed and refuse to comply with the tribal laws and pay the merchandise tax as required, which persons and companies are as follows:

W. G. Weimer,	The Grand Leader,
Stewart & Nuckols,	C. E. Logan,
R. V. Austin,	Metropolitan Barber Shop
Fred McIntyre,	H. J. Bettes,
G. W. Walker & Sons.	Ben Durfee & Co.,
Diamond Hardware Co.,	The Bug Clothing Co.,
J. M. Zike & Brother,	G. B. Kitt,
Choctaw Tailoring Co.,	Head Mercantile Co.,
J. F. Ferguson,	T. H. Kenneaster,
Star Grocery Store,	P. A. Vance Grocery Co.,
Townsend Wholesale Grocery Co.	

You were instructed on April 20, 1903, to notify each of these persons that unless the tribal tax due from them was paid on or before April 30, 1903, their stores would be closed, and as it appears from the correspondence submitted the persons named have failed to comply with the tribal laws, you are instructed, in accordance with the instructions of the Honorable Secretary of the Interior, to close the places of business of the persons and companies named unless the tribal tax is paid.

Very respectfully,

J. W. ZEVELY,

Acting U. S. Indian Inspector

for Indian Territory.

D. H. K. (C)

22 Executive Office, Choctaw Nation,  
Green McCurtain, Principal Chief.  
Sans Bois, Indian Territory, May 1, 1903.  
Honorable J. W. Zevely,  
Acting United States Indian Inspector,  
Muskogee, Indian Territory.

Dear Sir:

I duly received your letter dated April 20, 1903, advising me that notice had been served upon persons and businesses at South McAlester, reported by me by letter dated April 11, 1903; and advising them unless payment was made on or before April 30, 1903, their places of business would be closed.

I at once forwarded a copy of your letter to Mr. I. S. Lowry, royalty collector for the First District of the Choctaw Nation, and direct him to comply with the same.

He has done so, and I herewith enclose his report, showing that demand has been made after service of such notice, and up to April 30, 1903; and that the persons and businesses therein named have failed and refused to pay the tax imposed by our laws.

I have to respectfully and earnestly request that orders for the closing of these places of business be issued and executed without further delay.

Very respectfully,

GREEN McCURTAIN,

Principal Chief Choctaw Nation.

South McAlester, Indian Territory, May 1, 1903.

Honorable Green McCurtain,  
Principal Chief, Choctaw Nation,  
Sans Bois, Indian Territory.

23 Sir:

I duly received your letter, dated April 23, 1903, enclosing a copy of a letter of Honorable J. W. Zevely, Acting United States Indian Inspector for the Indian Territory, dated April 20, 1903, advising you that the United States Indian Agent, Union Agency, has been instructed to serve notice upon certain persons heretofore reported by me as having failed and refused to pay the merchandise tax imposed by the laws of the Choctaw Nation; that unless the amounts due from them were paid on or before April 30, 1903, that their place of business would be closed.

These persons and businesses were by me reported



to you some time ago, and by you reported to the United States Indian Agent, by letter dated April 11, 1903, and complying with your direction, I proceeded at once to South McAlester, Choctaw Nation, Indian Territory, where these persons live and their businesses are conducted, arriving there on April 25th, after the service of the notices referred to, and remained there continuously until April 30, making demand on these persons from time to time, and up to this date.

Payment has been made by the Acade Dry Goods Company and the Chaney-Becker Trading Company; but payment has been refused by all the other persons and businesses referred to in the said letter of the Inspector. They are as follows:

W. G. Weimer,	The Grand Leader,
Stewart & Nuckols,	C. E. Logan,
R. V. Austin,	Metropolitan Barber Shop,
Fred McIntyre,	H. J. Bettes,
G. W. Walker & Sons,	Ben Durfee & Company,
Diamond Hardware Co.,	The Hub Clothing Co.
J. M. Zike & Brother,	G. B. Kitt,
24 Choctaw Tail'ng Co.,	Head Mercantile Co.
J. F. Ferguson,	T. A. Kenneaster,
Star Grocery Store,	P. A. Vance Grocery Co.,
	Townsend Wholesale Grocery Company.

Formal demand has been made on all these persons, and businesses as directed by the Indian Inspector and by you; and I have remained at South McAlester continuously up to the expiration of the time set forth in the notices, for the purposes of receiving payments; and I now have to report to you that the above named persons and businesses have failed and refused to make payment as required by our laws after formal demand by me.

My request is that you report these persons and business in order that it may appear that the directions of the Inspector have been complied with, and request that orders for the closing of these places of business be issued and executed without further delay.

Very respectfully,

I. S. LOWRY,  
Collector for First District,  
Choctaw Nation.

"D."

Department of the Interior,  
United States Indian Service,

Union Agency.

Muskogee, Ind. T., May 5, 1903.

Mr. John C. West,  
Captain U. S. Indian Police,  
Present.

Sir:

For your information, I have to say that the Principal Chief of the Choctaw Nation has complained to this office that the following named persons and companies, doing business in the Choctaw Nation, have failed and refuse to comply with the Choctaw law and pay the tax imposed by the laws of the Choctaw Nation upon noncitizen merchants and he has requested, on account of their failure and refusal to pay said tax, that their places of business be closed:

W. G. Wimer,	The Grand Leader,
Stewart & Nuckols,	C. E. Logan,
R. V. Austin,	Metropolitan Barber Shop,
Fred McIntyre,	H. J. Bettes,
G. W. Walker & Sons,	Ben Durfee & Co.,
Diamond Hardware Co.,	The Hub Clothing Co.,
J. M. Zike & Brother,	G. B. Kitt,
Choctaw Tailoring Co.,	Head Mercantile Co.,
J. F. Ferguson,	T. H. Kenneaster,
Star Grocery Store,	P. A. Vance Grocery Co.,
	Townsend Wholesale Grocery Co.

You are therefore directed to proceed at once to South McAlester, Indian Territory, and close the places of business of the persons mentioned above, and see that they remained closed, unless the tribal tax is paid to the properly authorized collector of the Choctaw Nation.

Very respectfully,

J. BLAIR SHOENFELT,  
U. S. Indian Agent.

J. F. W. (E)

26

"E"

Department of the Interior,  
United States Indian Service,  
Union Agency.

Muskogee, Ind. Ter., April 22, 1903.

The Arcade Dry Goods Company,  
South McAlester, Ind. Ter.,

Sirs:

Complaint has been made to this office by the Principal Chief of the Choctaw Nation that you have failed and re-



fused to pay the tax imposed by the laws of the Choctaw Nation on non-citizen merchants residing and doing business in said nation.

You are advised that the Department has directed, in event a non-citizen merchant fails or refuses to pay the tribal tax, that his place of business be closed.

If you do not, therefore, on or before April 30, 1903, pay to the properly authorized collector of the Choctaw Nation, then your place of business will be closed.

Alfred McKay, U. S. Indian Police, is authorized and directed to serve this notice by leaving a copy of the same with you, and make due return of such service to this office.

Very respectfully,

J. BLAIR SHOENFELT,  
U. S. Indian Agent,

JFW (E)  
Endorsed:

3535,  
W. G. Weimer, et al,  
vs.

J. W. ZEVELY, et al,  
Demurrer.

Filed at South McAlester, I. T., in Open Court, May 21, 1903.

E. J. FANNIN,

U. S. Clerk.

27 And thereupon, on May 5, 1903, the following order was made and entered of record in my office:  
At Chambers.

("Caption omitted.")

This day coming on to be heard the application of the plaintiffs herein for an injunction against J. W. Zevely, acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, Union Agency, I. S. Lowry, John West, Alf. McKay, J. F. Wisdom and D. H. Kelly, and the same is allowed and granted.

It is, therefore, ordered that a writ of injunction issue against the said J. W. Zevely, acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, Union Agency, I. S. Lowry, John West, Alf. McKay, J. F. Wisdom and D. H. Kelsey, restraining and enjoining them and each of them, their servants, agents and employees from closing the business houses of these plaintiffs, and from interfering with plaintiffs or their business, or places of business, until further order of this court; and it is further ordered that the plaintiffs herein be required to execute to the defendants herein a bond in the sum of Ten Thousand Dollars, conditioned as required by law.

W. H. H. CLAYTON,  
Judge.

At Chambers, May 5, 1903.

28 And on Monday, August 17, 1903, the same being a day of the regular May, 1903, term of this court, the following order was made and entered of record, to wit:  
(Caption omitted.)

On the 17th day of August, 1903, the same being one of the days of the regular May, 1903, term of this court, this cause came on for trial, upon the answer of I. S. Lowry, and the demurrer of the other defendants herein; and the court having heard the arguments of counsel, and being well and fully advised in the premises, no proof having been introduced to sustain the allegations of the complaint against the defendant, I. S. Lowry, it is by the court considered, ordered and decreed that as to the said defendant, I. S. Lowry, this cause be and the same is hereby dismissed, and it is further adjudged and decreed that the said defendant recover of the plaintiffs herein all of his costs in this action laid out and expended.

It is further by the court considered, adjudged and decreed that the demurrer of the defendants, J. W. Zevely, J. Blair Shoenfelt, John West, Alf McKay, J. F. Wisdom and D. H. Kelsey, be and the same is hereby overruled, with leave to the said defendants to plead further at any time within the next 30 days, to which action of the court in overruling said demurrer, defendants except.

29 And on Monday, August 31, 1903, the following order was made and entered of record in said cause:  
(Caption omitted.)

On this 31st day of August, 1903, the same being one of the days of the regular May, 1903, term of this court, came the plaintiffs herein; and the defendants, J. W. Zevely, acting United States Indian Inspector, J. Blair Shoenfelt, United States Indian Agent, John West, Alf. McKay, J. F. Wisdom and D. H. Kelsey, by their attorneys; and the said defendants, in open court, declined to plead further in this case, and elected to stand upon their demurrer heretofore filed herein.

It is, therefore, by the court considered, ordered and decreed that the prayer of the plaintiffs herein against said defendants be granted; that the defendants, their agents, servants and employees, be and are hereby perpetually enjoined and restrained from closing the business houses and from interfering with the business of the said plaintiffs



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within the city of South McAlester, Indian Territory; and that said defendants and each of them, their agents, servants and employes, be and are hereby perpetually enjoined and restrained from interfering with the plaintiffs in the conduct of their business within said city of South McAlester.

It is further considered, ordered and decreed that plaintiffs have and recover of said defendants all of their costs in this action laid out and expended, for which let process issue.

To the rendering of which decree, defendants in open court excepted, and prayed an appeal to the United States Court of Appeals for the Indian Territory, which said appeal is granted by the court.

30 United States of America.

Indian Territory,  
Central District,

I, E. J. Fannin, Clerk of the United Court for the Central District of the Indian Territory, hereby certify that the above and foregoing 27 pages contains a true, correct and complete transcript of the record and proceedings had in the above entitled cause, as appears from the records of my office at South McAlester, in said district.

Witness my hand and the seal of said court, this September 1, 1903.

(Seal.)

By I. M. DODGE,  
Deputy Clerk.

E. J. FANNIN,  
Clerk.

Filed in the office of the Clerk of U. S. Court of Appeals, Ind. Ter., September 1, 1903.

WM. P. FREEMAN,  
Clerk.